

Town of Milton
Planning and Zoning Meeting Minutes
March 21, 2006

The placement of one modular classroom at H.O. Brittingham elementary school further identified by Sussex County Tax Map and Parcel 2-35-14 parcel 88 and one modular classroom at Milton Elementary further identified by Sussex County Tax Map and Parcel number 2-35-20-11.3. Is anyone present in behalf of this application. Can you state your name for the record.

Tyrone Woodyard – you want to put two modular classrooms at two different locations, so board, do you want to discuss HOB first? Where will it be located at the HOB? It would be one double unit at the rear of H.O. Brittingham elementary school. The size is approximately 24 x 64 feet. One single unit with 2 classrooms. These are necessary to do all day kindergarten that will start in the fall of 2006. The children that are in these units will be using the restroom facilities in the big building? No, these units will have a single restroom in the building. We hope to have a minimal impact on the sewer system. It will have air conditioning. These being kindergarten units, they will mainly stay in these two modular units during the day except for recess, lunch and gym. That's correct. These are, hopefully, temporary for two to three period. We eventually want to build a permanent structure. Is that going to be built within the referendum. Yes, the one that we just passed. Are you going to tie these units into the sewage and water system? Yes. Any questions? Will you see it from the road? No, neither unit will be visible, they both will be in the rear of the building. At Milton elementary school, it will be on the back side of the annex building by the tennis courts. How long will they be there? We're hoping that within three years we will be building a permanent structure. The Annex building in the Milton elementary, which closed the middle school, which was originally the high school, that one over there, yes. On the annex part, there's two modular units at the end of it, yes, and they've been there temporarily for about the 10 or 15 years? I believe so. Are they going to go at the time of building, we are hoping to. Those right now have part of the Sussex Consortium, so we have to incorporate that into construction. This shows the two modular units that are there now as these two things here? These are the ones that have been temporarily here for 10 – 15 years, yes. The new one will go beside them? Yes. The entrance that these children use will be through the annex, down the hall at the end and make a right. That is to be one double unit, two classrooms. Probably about 1500 square feet. Is this also for all day kindergarten? Yes. Their restroom facilities will be in the units as well? Yes.

With the passing of the referendum, has the school district made allowances for the projected growth of Milton or is it just for the numbers of children that we have right now? Anticipated into next year with a full day kindergarten, beyond that, I'm not sure how much more has been anticipated. There are several developments that are being proposed, we are looking into. What I see happening is, the school building on, yet, because of the way the area is growing, still needing the modulares. I'm hoping not, I didn't want to put them there from the beginning. It's a situation of need right now. We have looked at projections and that this is projected into next year, I think we are going to happen with the developments that are being planned for this area.

I just wondered, have either the parents or the staff just taken a look at your plan, do you know if they are more or less ?, the futures. I believe the staff are looking forward to having some relief, they are somewhat crowded, H.O. Brittingham now, already has a

pilot program for all day kindergarten. The all day kindergarten will be mandatory? I believe 2008 is what the governor has recommended. There is a real push on now to increase quality education in Delaware. This is a great idea. It will be a need come September.

You mentioned the water and sewer impact, as you know, there are limited EDU's and I don't know how council feels about using them. They would be made available for this but something that council at least needs to be made aware of, and then has the fire marshal has been contacted for those types of things? Yes, as a school district, we must go to the fire marshal for final approval of this. Is this a preliminary or final approval this evening based on not having the fire marshal's approval. Typically the town waits until they have the fire marshal's approval, maybe, because of this, that once the letter is received, the town staff could proceed after that and give it a final. Do you know how many students will be in these classrooms? I can give you a rough number tonight but it will be more accurate come September? How many children normally are in a classroom for kindergarten per room? Probably about 22. We use a Para-professional in the room also. To answer Mike's question, part of their state funding doesn't always allow them to look too much at growth. Other school districts have run into the same thing where they have asked to build more and the state says no, you have this many students and you are only allowed a certain increase no matter how many houses are being constructed at this time. Any other questions?

Ms. Rogers, both schools, since Milton does not have an educational zoning district, these schools are special use permitted. What the commission is doing is modifying the special use to allow these buildings to be there and, in particular, article 6, which calls for the procedures for accessing the nine hearing special uses and I quote a little bit, the planning and zoning may impose standards on the ? that expressly specifies by this ordinance and any additional conditions which planning and zoning considers necessary and reasonable to protect the best interest of the surrounding properties, including size, controlling the location. If you grant this special usage, they still have to go and get a building permit and a site plan to place it. The general consideration in granting this special use are considering the nature and intensity of the uses in the area, that it will be detrimental to the health, safety and general welfare of the area and, what's important is that you realize that you can put conditions on it. For example, that it will be three years, it will be temporary, that it will be in the location that they will have to give us a site plan and a building permit. What you are doing tonight, is considering the modification of a special use. The modification is the adding of two temporary facilities. This is not a site plan review, it is just a public hearing for a special use exception. I suppose it could be considered a site plan as well, they still would have to get a building permit. Is this site plan detailed enough to be considered a site plan? It doesn't show set backs? I don't believe it is because a preliminary site plan would have to be required plan submitted by a licensed surveyor or professional engineer. Showing the placement of the trailer and the existing building? Yes. What we are actually acting on, should we choose to act, is the special use exception for the placement of the modular units at the schools. A site plan would be done at a later time. Correct? Yes.

Is there anyone here that is in favor of this application? Is there anyone here in opposition of this application? Can we have a motion? I make a motion that we approve the placement of both of these units at both locations with one contingency and one condition, the condition being that it be granted for a period of three years and we review it in three years and contingent on the fire marshal and all the other approvals for it to be

placed three. I'll second that. We have a motion and a second. All in favor say "Aye" - aye, all against, none. Motion carried.

The next item on the agenda is the application of land, ? land L.L.C. for final site plan approval for phase I and II on the large parcel development titled Harrison's Creek. The property is located on Harbeson Road also identified by Sussex County Tax Map Parcel number 2-35-20.56. Is there anyone present on behalf of this application?

Jeff Park – from ? land planning representing the application. This is a follow-up to our meeting last month where we feel we have met the requirements to your request your recommendation to the town council for final approval for phases I and II only of the Harrison's Creek master plan. I am here this evening to answer any questions, I also have Mr. Coban of George Miles and ?, whose firm prepared the lions share of what was weighed in by the pound at the town office. If you have any detailed questions in regard to those plans we'll be glad to avail ourselves to them as well.

The construction building has been reviewed, there was a letter that I returned to GNB, March 13, that has a few minor changes that still need to be in the drawing. Most of those were a result of some of the other reviewing agencies that have made comments and things just got tossed into the mail. I believe I got those changes this evening. Yes. I haven't had a chance to review them but they have those drawings and before council meeting I will review them. The record plan still needs some work. It's mostly notes that are required, Mr. Clark and I spoke earlier this week and we are going to get together and review these requirements, but the record plan is not 100% complete and ready for signatures by all parties. One item that I asked Tim to look into, and we discussed it a bit and we also discussed it with Mr. Clark, on the record plan, there is a phase I and phase II that they are constructing at this time. There are utilities and a storm water pond outside the recorded area of where the actual lots are. I'm not that familiar with the LPD process, whether the recordation of the master plan counts and allows some of that to go on. In a typical subdivision, where you don't have a master plan, you don't admit construction outside the recorded boundaries of the record plan, i.e. if things stopped at the end of phase I and II, you would have a storm water pond sitting out in the middle of a farm field, that there is no way for anyone to have access to it other than the existing property owner. The same thing, there are utilities running across the property for future phases, but that's where it has to connect to the town, that, as the record plan presently stands, the town could actually go out and work on it. That's what I've asked Tim if that is a big concern or the fact that we have a master plan, that the more that that defines where everything is going to be in the next phase if that is sufficient. I'll respond by asking Mr. Clark if you know what area you are talking about? Actually, the infrastructure to serve phases I and II extend beyond the phase lines in all kinds of areas. To get water to the site, to get sewer from the site to the town, to get electric, cable, telephone to the site. All the utilities in phase II are in the center of the property lined up with the entrance. In fact, almost every agency has improvements that fall outside of phase II in some part. In my experience, that's not unusual, but, it is something we need to comment on. When I spoke to Mr. Kerr earlier about it, we came to this planning commission with an application with a master plan and asked for the master plan to be approved in its entirety, and not in phases just for this purpose. So that there will be no confusion as to how things in the future would be dealt with in terms of how future street extensions and housing communities and neighborhoods would join the things that we come to you with the first phases and the final construction sense. It was our intention to do it that way to avoid this confusion but if we need to somehow address this in another way, I guess we

are at your mercy on how we would do that. You have to adhere to the master plan. The final site plan is the more detailed master plan and as you eluded to, it would be very impractical to hold you to a final site plan for the whole LPD if we are proceeding in this fashion. My answer to that question and Mr. Kerr's question is if the final site plan for these phases are drawing on features that are not in the final site plan, the ultimate comfort level that the town has is that they are included in the LPD master plan, which the applicant has to adhere to. It's just not required to adhere to the detail that is required of the final site plan. I'm not hearing that the technical aspect of those features are a problem, other than the fact that you don't have the detail of them and they are not in the final. The details of the utilities outside of the recorded area are there and provided and it never occurred to me until after our last meeting, and I think it was the next day I got into the drawings, and the small, permanent, gas tanks in phase I were shown on the new record plan. I flipped the page expecting to see ones for phase II. Where the tanks are sitting is, actually, outside of phase II record plan, so they are sitting on this no man's land and for some reason, that set off a bell, it didn't when I looked at the sewer, the water, but it did then. I would tell the commission that I personally in my practice, having come across that question, that is just my reaction that when you have the LPD a unique creature, it's a larger creature and you approve the master plan and then it's not unusual to approve the final in phases. I'm surprised that the question hasn't come up before. The only thing I can say that I see come up is in Sussex County, if it's just a standard subdivision, Sussex County is very particular about not allowing anything to go on in the future right of way of a road until the plan is recorded. Some of the golf course communities, you'll see they built a golf course, but there is this kind of no man's 50 foot path going through the center that Sussex County doesn't allow even the topsoil to be removed until the plan is recorded and no utilities can be constructed. I think the master plan probably trumps that, that it is not a concern, but, I guess I'm trying to shift some of the concern. Using the county as an example, and the RPC, which we would liken to the LPD, it is routine that you have infrastructure that is outside the boundaries of phases being constructed. It would be rare to see a project of this size that wouldn't have that condition. The first phase would have to be totally independent little piece, it would have to have a separate storm water pond, separate sewer plot. I've seen as much as just a right of way of a road that has come into the record plan of the county. Unfortunately, it's not covered in it. His master plan was quite detailed, a lot more than the first one we had gotten, I'm looking at a worse case that if after phase II nothing happens and the master plan is recorded, I can't speak as to if it has or hasn't been recorded. It's recorded in the town.

Jeffrey, correct me if I'm wrong, were you the person that requested well irrigation last month for your development, I am, how are you proceeding with that? We are going to discuss that, assuming we have your blessing tonight, to go to the town council with your recommendation for approval of these two phases, we are going to bring that matter up to the town council. That really is, I learned, is a town council matter.

Speaking of that point, on the record somewhere in the history of the town minutes, they discussed having wells inside the town limits for ground water heat pump use. So even though the regulations stipulate you can get water from the town, there was an issue brought up, it probably goes back at least a couple of years, where somebody applied and it may have been something to do with the project that Bob Blains was on, I'm not sure about that. How did they make out? They approved the wells because they were not for part of the water, they were for ? and irrigating. There may be some similarities for you to argue your point. We do intend to draw water from this and we have to show the town

engineer how much and there is some geology involved here to see how it's going to affect the town infrastructure. We accept that responsibility.

A couple of other comments, in Cannery Village it was approved with the requirement that all the electric, telephone, cable to be in the alley. Cadet has flat refused to do that. All the transformers and pedestal boxes are going to be in front yards and this is also proposed to do the same thing. Have you had any discussions with Connective whether they are going to allow the electric in the alley. As commented, the Cannery Village was we can't get our trucks down the alleys. Their alleys are different than yours. I would guess that that would be the distinction that our alleys are totally different than proposed in the adjacent community, but, frankly, the utilities won't talk to us until after the state has processed. We have sent some plans, but, they don't get serious until you are about ready to break ground and then they'll start talking to you about design. We did meet with them early on and their concern with us how we were going to deal with the street lights. We have narrow spacing on the houses. The street lights are on the street and the utility boxes for all three were in the alleys and we agreed to run conduit between houses and an easement for them everywhere a street light occurred. They gave us requirements, we have garages spaced and we had to come up with a specific dimension where we were going to lay off the property line with our garages to allow all three of the pedestals to occur and they gave us those dimensions. We don't have anything official other than we sat down with them and talked about what their needs were, we don't have a contract with them yet. We did meet with them early on and at least at that time, there was no objection to being in the alleys as long as we met those criteria. Outside approvals that I have a copy of and there may be others that were submitted to the town, the erosion sediment control, which is at the Sussex Conservation District has been approved, fire marshal approval, DelDot, ? storm water, I didn't see things from the division of public health, I know there are some comments, I don't know if you got a letter from them, a letter from ? on the gravity sewer system, drinking water is approved, gravity water has not yet. I saw where the Sussex Board of Assessment has accepted the road names, there used to be a requirement that the post office accepted these, I don't know if the Board of Assessment has taken over Sussex County 911 to accept the names. Actually, we met with the post master. They are hand in hand with Sussex County now. Delaware health and social services has approved the Milton Water Department for the phases I and II of the water. We do have the authorization to operate and maintain the temporary waste treatment plant disposal area. Other divisions mentioned, state fire marshal, letter from DelDOT was in the package, it was the gravity sewer and water that were the two in particular. Denrick approval of the gravity sewer is not in hand. The plan, as submitted, don't show any frontage at the entrance to many subdivisions, they have signage. The question that you raised whether you want to see it now or as a separate item. I said a separate item. The last thing on my list is the waste water treatment plant, which is in my court, getting comments back to Cannery Village, if you choose to move forward this evening, I would ask that there be some part of your motion that recognizes that there is a waste water treatment plant to be built and that that is still an outstanding issue that needs to be addressed. It is in my court at this point, but it needs to be addressed. Is it 50 homes or 12,000 gallons before it is needed? 50 homes. Denrick has approved and licensed the plant. We did move forward through the first, putting it back to Bob to comment after they approved it. I've had it quite a while, but it seems like it keeps getting buried by other drawings. Would you remind me in phases I and II, how many homes are I involved in this? Phase I is 32 single family homes, phase II is 53. Are they stand alone? No, some of them are semi detached and some are attached and some are detached. There were some quads, yes. Are there any more questions?

Would someone like to make a motion. I make a motion to approve this as a final with a couple of contingencies, one is that you get your Denrick approval and other applicable agency approvals, and if Bob signs off on the temporary sewer treatment plant, and on the ? we talked about on the record plan. I will second, I also am most curious about the waste water treatment plant. We have a motion and a second, all in favor say "Aye", point of clarification on that the record plan can go to mayor and council to be signed and the waste water treatment follow after that, is that what you were saying? I don't know how long it's going to take. I'm afraid that going back and forth it might take a couple of times, so it could be a month or two to get all that worked out. We'd appreciate that. I would think that to say that before some number of building permits are issued that that needs to be finalized. They have to have it done before number 51 is given a certificate of occupancy, so say, before 30 building permits are issued, it's going to be some length of time that they are not building anything but infrastructure, before they can start construction on house construction. It could be this time next year or 18 months from now before they actually need a treatment plan so there is plenty of time to get that done. What is your anticipation time before you actually build a home? We are going to try to get a model up this fall. We showed you the last time the model area and we are going to break ground shortly. We have a motion and a second, all in favor say "Aye" - aye, opposed, none. Motion carried.

The next thing on our agenda is Cannery Village, phase I-B is requesting approval for a temporary gas storage area to service completed homes until construction of a permanent gas storage area is completed.

Carl ? of ? – I have a copy of what the plant would look like and prints for where the proposed ? . What we are doing is getting gas to the house in the first phase now. The tank is filled, it's over by you, so we have to put temporary tanks in to feed the houses that are there now and the location that is on the print is right in line with our main line running, we could tie into that and that would be temporary until that phase is done. We've checked it and it's all approved by the fire marshal. You put in four 1,000 of vaporizer in, ? in, and the only thing you don't have is where is it in relationship to the corner of Chestnut and ?, that's a good reference for me. I have a large print. Here is Draper Blvd. and this section is what they completed and blacktopped to here. These houses are what is being put in, we have our gas lines run there. We are proposing to put the temporary tank fill here. It's a common area next to a retention pond and then a big intersection, plenty of room for a truck to fill the tanks or if there was any problem for fire trucks to access that. How long do you think you will need those before you finish? I don't know. Those tanks are going to be servicing these homes? There would be four tanks that will service homes here. That just falls into part of the infrastructure. We are running a main line that follows the sidewalk down to work through the development to get to the main tank fill. The permanent ones are just closer to route 88. This is just the most common sense area to tie into the main line. Are there any concerns about the construction or what are the differences between a temporary tank. Temporary tanks would be above ground tanks common tanks that you would see at a house, just a little larger. We would tie them together and fence them and the permanent tank has to be fenced also but it would be buried. The fire marshal requires the fencing so ultimately you won't be able to see them. Any other questions?

In the area of the temporary location, will the road back there be paved now? It's crush and run back there now but probably the next time they blacktop they will put the base coat down there.

Other things for your consideration it is what they are showing to be a last portion to be built in phase II-B to be divided into a couple of sections. There really isn't a place other than parking on the street for the truck delivery and there really isn't anything other than a turn around capability. I don't believe you can continue around with the truck. The truck has to back up. The fence is awful close to where the property line is, about 3 feet off on one side. Whether you would want to see it set back any further, whether you would want to see any landscaping. It is in an area that won't be constructed right away. Is there ? be closer to the vaporizer? I don't know if there is a minimum distance between the tank and vaporizer. Discussion as to how far from the property line the tanks are. Is there anyone here from the development to answer a question about landscaping?

Joe Greene – Chestnut Properties, developer Cannery Village – I have not looked to see about landscaping, while he is looking, in reference to parking, when you can fill this is the designated parking area. If you we were going to put up an enclosed chain link fence with slats in it, we would put up a better vinyl fence. It can't be wood but they don't have a problem with vinyl. Do you think that the tanks would be relocated prior to the lots in that immediate area being developed? I would say, we generally want to stay at least 50 lots ahead of where they are building. The point that they are building here where it's in the proximity of that tank, we are going to be over in the infrastructure in over there. Before they would settle any of those houses, we would have them relocated. Discussion on what is needed to be moving the tanks.

One general comment is that since we have had two discussions tonight about the word temporary, you can't know exactly how fast things are going to sell, things have slowed down in Milton and so we are talking about something that you cannot quantify. Right now we have temporary tanks sitting next to each house and we wanted to get rid of that look.

I'd like to discuss landscaping in front of the fence. I'm an amateur gardener, there is something more attractive than the Leland cypress arborvitae. We are working with our landscape contractor right now, they will be the ones landscaping it real soon.

First of all, the fire marshal regulates that this installation with a national gas code to 50 feet, actually in Delaware is one of the hardest to get approved, I'm sure that if the fire marshal has approved it, it is safe and sound and from a common sense stand point, if you start to market houses back near this temporary facility, you're not going to want it to be a negative thing so you'll want to landscape it. The time limitation is always a concern, but, if we stipulate that we ? for phases II-A and II-B only, then when you move out of those two phases, you will have to do something else. I don't think that those four 1,000's will handle that BTU load anyway. So with the conditions of this serving only II-A and II-B only, and the conditions of getting the fire marshal's approval, it was pointed out that this is probably not the right one because this is issued to Cannery Village, Dog Fish Head Brewery, I think you submitted the wrong one, getting a corrected fire marshal approval, I make the motion to approve the temporary gas storage for the two phases, second. We have a motion and a second, all in favor say "Aye" – aye, opposed, none. Motion carried.

The next item on our agenda, the application of Dr. James C. White and Nancy L. White and Chestnut Properties for L.L.C. further identified by the Sussex County Tax Map Parcel number 2-35-14-132, 2-35-14-132.01, 2-35-14-143.03 discussed review and

recommend annexation agreement letter to the town council. Do you have any comments to this annexation agreement. Mr. Dyer is here and maybe comment on some of the features. The annexation agreement that went to them is a standard one that we have used a couple of times and it talks about annexation because ? that many. I don't really have a problem with it, especially since they included the impact fees for both sewer and water that were recently passed and the \$8,000 per acre annexation impact fee. My question for that is how do you propose the timing for when that will be paid. Upon annexation or ? . For the record my name is Preston ? . I am a member of the applicant's ? . Normally, we have done annexations in several different municipalities and each one is different. I don't think I really have an answer as to how you will do the one in Milton. We've done it in different areas, we've done it different ways. There are some issues in the overall annexation agreement that I do have questions about, and that is in your previous annexation agreements, you didn't have a defined amount for your impact fees and you didn't have an annexation fee, but you had provisions for payment by the petitioner, the developer for certain offsite improvements. My concern would be that with that previous practice, that somehow you or counselor or whomever would retain jurisdiction over it would be seeking to follow the degree of offsite improvements to some extent that you had previously and I would have difficulty in comprehending that and, therefore, one paragraph regarding offsite, I think it should probably say if full costs are not covered by the annexation fee, I think it should also say as well as the impact, whether it be for water or sewer, the applicable impact fee. I think it should have covered both of those. The reason being that in those cases where the impact fees, for example for Stewart, include both the transmission cost as well as the treatment cost. It is assumed that the transmission cost in the county covers the lines offsite that get to sewer capacity both to and from the site. I just want to point that out just as a caution that we have to make sure that in this instance with the impact fee and the annexation fee we would be covering, given the magnitude of them, would be covering both of those items as well as the offsite improvement. It is customary when we go to a development that the internal transmission line and the difference. Different components of that infrastructure would be put in an ? and at some point dedicated to the town. I did have that concern I think I should have included not only the annexation impact fee in that offsite paragraph but also the applicable facility impact fee, whether that be water or sewer. Back to your original question, we have paid it at the time of annexation and some of the others at the time of final record plans and I've seen at other times, where it has been at the time of asking different building permits. How many agencies are involved. The overall project has 14 of the acres in town and a portion out of town. We would be ? it on the acreage that is out of town and that is going to be 60 – 65 acres is the portion that is currently not in town. Let me understand it, you made comments about the offsite and cost and what project has sewer and water here, and what the annexation agreement says now is that the applicant will pay the cost to bring that system to the project. You're saying that the impact fee for sewer and the impact fee for water, and the annexation fee should be earmarked to cover that. The annexation agreement that we tended to a couple of weeks ago, said that the applicant that they agree to this, annexed and given the zoning would pay for the cost for bringing the water and sewer to the project. The sewer and water impact fees would be attributed to other costs. They would also have to pay for the individual hook up to the homes. That would have to be resolved with the annexation agreement and the time of paying, we are talking about \$500,000? . That language as well as cost decisions I am not making those decisions I'm just making sure you understand that they are on the table here. The reason I raised that is prior to council passing the revision, I had the annexation agreement drafted in the same form as the Holly Lake Agreement. The Holly Lake agreement, there wasn't a provision, obviously,

for an annexation fee on a per acre basis, nor was there the increase in the impact fee, specifically, the ? sewer. The reason I point out how the county does it is, the county has two components, as I understand it, to the sewer impact fee. One component is the actual cost per EDU for the treatment. The other component is the cost for the transmission. The transmission is assumed to be the overall blended cost for the offsite transmission cost. There are several different factors that, once that was passed, I went back and had to re-do the entire annexation fee. That's why in the offsite paragraph, I made that comment and we are open to paying the annexation fee in accordance what is both reasonable and fair and if this occurs, we've done it in several different ways, sometimes it's based upon the number of building permits over time, almost like under a phasing thing, we done that in other municipalities as well. From our prospective, we put in there that the then current fee, would be taken exactly out of the language.

I'm going to pretend that I am a member of the town council and ask you a question as a taxpayer. What impact all these ? you mentioned to me, have on me as an average tax payer in the Town of Milton. The presumption of the fees is, there are certain costs to the town associated with annexation. The annexation fee is used to offset so as to not have a burden or incurrence of additional costs on existing tax payers within the Town of Milton. The purpose of the impact fee for annexation would be to offset the cost as to not create any additional cost on the tax payers that currently exist within the Town of Milton. Do you understand that as he is explaining it? The basic concept, yes. I understand what you are saying, Tim, however, as I said before, I am an amateur landscaper and my water bill this past summer was between \$400 and \$500 dollars. What you are saying isn't really true because my water bill practically doubled from the summer before. This is the reason that we have impact fees, theoretically. I know the impact fees are supposed to be, theoretically, the responsibility of the developer. However, when I got my water bill, I did not do any more watering than I did the summer before, correct? Yes. This is two separate issues. The water bill is based on the operating cost of what it costs to pump the water out of the ground to get it to you and for your use. The way the town's billing used to be performed, there was a lump sum for so much water and the more water you used your cost per gallon actually went down. If you used five times as much as your neighbor, you might have only been paying twice as much. The more water you used, the cheaper it was per gallon. It cost the town the same amount to produce the each gallon of water. What they tried to do was, there were people who were using very little amounts of water, they were subsidizing those using a lot of water. They tried to go back and look at the rate structure and the overall increase, the first couple of months it worked out that the total amount of money collected by the town really didn't change. For everybody who's bill doubled, somebody else's who wasn't using any water, went down considerably. At the same time, the town is trying to make sure that the cost of the water system, the residue collected pays for the expense. The general tax revenue is not supposed to subsidize water. The water is supposed to stand on itself, the sewer department is supposed to stand on itself. You have some of the lowest rates in the state or had. Your water is getting closer to what everybody else has, your sewer rate throughout the towns, you take the water rate and double it. You take your water rate and add \$5. When you explained the different elements of how they work, the way you explained it sounded like he made it a more simple explanation. Has there been any engineering done to tell you what you are going to need to do to increase sewer and water facilities to this property? What I'm hearing is you are unsure that with the sewer impact fee, the water impact fee, and the annexation impact fee, that should be all combined to be used to bring the facilities out to your property. The way this is written it may not specifically say that because, in addition to these, you also have

connection fees at each property. You have water and sewer connection fees, which is considerably lower. As far as I know, this commission has not been informed as to what these fees actually represent. I don't know what we are supposed to do with them. It was a very ambiguous explanation as to what it was supposed to do. From what I read, it did say that a portion of the annexation fee would be attributable to water, a portion would be attributable to sewer infrastructure. That's how I read it. Maybe I didn't read it correctly. A portion of that \$8,000 per acre would be earmarked for that, among other things as well. Currently, you know they tabled the annexation impact fee. I counseled council to build a foundation on the nexus or a rational basis between the fees. It's a hot topic. The procedural process here for this planning and zoning commission, is you have an annexation application that was referred to you and that requires that you consider it for annexation, you've had the public hearing, you also have to consider it for zoning, in this case, the applicant has asked for an LPD, with the zoning of R3 and R1. Your job now is to make a recommendation to the town council #1 the pros and cons on the recommendation as far as annexation and of recommending the zoning for up or down for what they are applying for. In this case, the application, for a change of zone comes with the master plan. In other words, if you were to recommend approval of the change of the zones, you would be recommending approval of the LPD and that specific master plan. Your communications to the council showed lists of why you think it should be annexed and why you think it should not be annexed with the recommendation on zoning. As far as the annexation agreement, the ordinance says that the planning and zoning commission should consider the terms of the annexation agreement in the annexation process and you will make a recommendation for that as well. You basically have three recommendations to make. One on zoning, one on annexation, ? but you can make specific recommendations on the annexation agreement, that is we are presented with an annexation agreement and the terms of dealing with offsite utilities still need to be resolved and a cost analysis of whatever and the terms of the annexation agreement needs to be spelled out. That is just a general frame of where we are. Can anybody verify that the annexation agreement is consistent with the presentation? A while back, Mr. ? I don't have any of that information. The information of the LPD of how much is R1 and how much is R3. I think that was something that Eric more or less worked out to get the final number to work out. What I'm saying is we are here to approve the annexation and the annexation is very specific in what it describes is going on. It might not be if Eric was here. Part if it is that we need to find the line that separates the R1 and R3. You can't just say 25 acres, it has to be some type of plan that has a dashed line across it and to put an actual dimension of it with actual leads and bounds around this portion of the property. So that, in the future, somebody doesn't come in and try to say that the dividing line is that when all of us come to the next meeting and can't remember what we did tonight. The other thing in here, it gets pretty specific in the language that there will be a commercial restaurant and I know Jeff drafted it, but, in all reality, if the market changes and nobody wants to open a restaurant, does that mean he has to build one? So much time has passed between the presentation to us, and I feel at a bit of a disadvantage, because ? I have to know more about how to answer Mr. Dyer's concerns of exactly what these impact dealt with. It would be something that you would read all of these and then actually, the way it gets written, none of those impact fees cover the cost to run 500 feet of upsized sewer and water out to the development and you're stuck with another million dollars. That's a very good point, I think I only have two responses, the first is as the developer, our desire with this annexation was and continues to be that we have endeavored to listen to the governing body, which is you and the city council, we have endeavored to listen to different feedbacks from whether they be a private individuals who felt a concern or a regulator and we have made an effort to integrate and include

many if not all of those that we could accommodate in both the plan and our approach with the town. The second item is we have been criticized by some other individuals for stepping to the plate and including what was proposed in the council's last provision for the annexation fee and the impact and that criticism was based upon the fact that other people believed that we should challenge it. What I am here to tell you is that our desire is to be part of this process and not be antagonistic to it. When we adopted that, which I actually made a couple of errors, which Mr. Willard didn't point out, what we are trying to do with this is to get both the commission and the council the assurance that we are working within the framework of what the final regulations turn out to be. What the final situation is, is something that we believe will be a fair process and will be levied and exacted reasonably correct. We really did, whether it was blind faith or whether it was good business or whether it was bad business, we did say that if this is what is currently there, and that is what we are seeking to ? , and with the caveat to find out how this basically shakes out at some point, if we continue to wait for how it all shakes out, I don't know if we will ever get the council to be able to find out how it's going to shake out. While I appreciate what you are saying, I think that the proviso here is that I guess as Mr. Willard indicated that it is a work in progress, there is going to be certain further clarifications made by council as to how all that will shake out, but we would like to be able to go forward and abide by what does occur and I think it is probably presumptuous for us to think that we would not be bound by that, but, at the same time, I guess council has to give us some degree of definity of what that is going to be. I don't know if that is in the horizon. You do understand that it's a little hard for us when there is ? to say we want this and that. Statement as to where R1 and R3 would be set up. I remember having no issues with the presentation it all seems to be in the? Again, I can't sit here and verify that this annexation agreement accurately describes what was discussed at the public hearing, but, I think the annexation agreement has been a part of the council's responsibility. Being that we have already installed the most current fee structure, I don't know what the issue is, it all looks fine to me. If it looks fine to them and to Bob and you, I can't see where we would be in a position to do anything other to recommend to go and take it to council. I think they will have to work out the nitty gritty to it. The benefit of the annexation agreement is just that, an agreement, and right now council is wrestling with, they have declared the impact fees for water and sewer, but for a year or so, we debated whether to have a fixed annexation agreement and we amended the charter to allow for annexation agreements rather than fix a fee and now the tide has come back and so we are wrestling with it a specific one. I don't see how this commission could be prepared to be really hit that head on and I think it is more of a council. What is the status of the site plan review? Have we been ? in on that yet? We just had the hearing, as all, right? All that was required be submitted was a conceptual master plan and that may be why your at a loss because it was given to us in some detail that there were at least two types of ?, I think. That master plan will be attached to the sanitation agreement and I think that the survey probably indicating the zoning ? to be attached to. It becomes part of the annexation agreement. So if we forward this annexation agreement to mayor and council, and they work through it and agree upon it then, what happens, we get it back for final site plan review? Yes, if the project goes forward, you would have to get more detailed drawings. They cannot substantially deviate pursuant to the annexation agreement from the zoning and the zoning also requires a master plan. We need to establish quite a few things and we have to recommend whether or not to annex this property into town. We have to determine what zoning is going to be attached to the parcel when we annex it into town, if that is what we should recommend to council, first we have to forward this annexation agreement to say yes or no whether we agree with the terms of the annexation agreement and since they want LPD, that's a fourth thing they

have a master plan. So does the master plan, if we forward it, with all these other things, is the master plan that they submitted, what we are also submitting for approval too? Yes. That was already submitted to council. No, nothing has been submitted to council. They have nothing. I thought it originally went to them and they referred it to us. That was just a request for annexation. Right, we went to them first and then they referred to you. We discussed it, we reviewed it and I can't see any reason to disapprove it so by a process of elimination, I have to approve it, the annexation agreement to go to mayor and council. It looks to me that it looks fine. Can we put some caveat on this? What we are feeling a little bit here, is that the town doesn't have a town manager, the town does not have a code enforcer and the more you bring it to the table for the pros and cons, I think whether we put it on ? or whether the commission charges ? of communication to the council for your review, that's seems like the only fair thing to do. I'm afraid that what you send up now would just be too much of a confused statement. This shouldn't be delayed much longer.

The issue as I see it, we are confused about the annexation agreement that is not specific in its instructions and policies made as to how these fees are going to be used, what they are going to be used for, however, that is not necessarily one of our duties is to examine how those fees are to be used. Our duty is to determine and make a recommendation to council whether or not to annex the parcel, what zoning classifications to give it and the master plan, do we or do we not, want to send it up as it is to be approved and some of the terminology was in the annexation agreement actually has to be a product of council when it gets there because there are things in this agreement that planning and zoning doesn't have any say in. We really need to determine whether the commission ? should give the council recommendation to annex this parcel. Do we agree with the zoning boundaries that they have given us for R1 and R3? Yes or no. Then they submitted a master plan, do we agree with this master plan and are we ready to say we want to send this up with a recommendation of approval or denial? If we send it up with an approval, it has a preliminary master plan so that if it is annexed, if they say yes to the zone, if they finally get to the details of the annexation agreement worked out, the master plan can come back for final to be approved as a final master plan and then they go over these fees of great detail of how ? will be developed. Is there something that is tentative? If you feel that this is a definite maybe, then we are not ready to forward this to council and I ? the recommendation. I'm not, there's still a question mark. We don't have the information to make the right decision. Would it be appropriate to ask mayor and council that you are to or not have anything to do with the annexation agreement until you get some fair ? I'm the one who originally came up with the idea of the annexation fee. I was also the one who was vehemently opposed to an agreement because it takes forever to work out. I go back to the old days when it used to be that an annexation application was made and you act on that. It's basically you look and see if the property should be in town or not be in town, you weigh the pros and cons. You say, it should be in town, now what should it be zoned? You apply a zoning. You don't ask the developer to spend dollars developing a master plan, trying to come up what the cost of utilities would be, we don't know? How much of the water system of the existing town had to be replaced? Until we know a whole lot more about what is happening here, we can't develop that. I think if we go back and look at the minutes you may have had a public hearing for an annexation of land and as you are going through that, it kind of became a, oh yes, it also included the plan, and one night the ? was going through all of this, he went into a lot of detail, I was sitting there going all we are trying to do is decide whether this property should come in, I really don't care how big a restaurant. I think it was done that way because they were applying for the annex and, at the time of application you have to

apply a zoning to the property and they wanted a zoning with an LPD overlay. My understanding from Tim and Eric at the time, it's not like they are coming in as R1. Had they chosen to apply and come in as R1 and be annexed as R1, and then once they were in the town, then you go through the hearing process for zoning district LPD it probably would have been done and over with a long time ago. If I can remember, it was advertised as a public hearing for annexation. But, it has zoning attachments with it. It often has that. The zoning attachment is R1, R3 and LPD overlay. The presentation was way over detailed for land usage, but, at the same time if you are going to make a case for multiple zoning, you need to do a little bit more than an application. It was layered with details. Discussed things in the public hearing either in October or December. I don't think we are ready to deal with all the stuff you need, but as far as this annexation agreement that is listed on this, I would make a motion that we move this annexation through and away from us because I don't find any problem with it. I don't see any purpose we can serve by keeping it hear and us going through this annexation agreement because most of it is an issue between the developer and the mayor and council. I think the annexation is very attractive. I think it would be a nice adjunct to the town. I just think all the rest of the elements make it very confusing and it is not going to be a productive activity and move forward in total, but if we could just have the annexation that might be a reasonable first step. Then go back and forth with the council to ? property. I think the annexation agreement is part of the annexation process, the agreement I don't have any problem with, it looks good, if it looks good to Tim, Bret and Bob, then it is up to the mayor and council to work out the nitty gritty because we aren't qualified or have the authority to get into the middle of that stuff. We don't know what? is to represent in the first place. So Tim, the question is, shall we send it forward piece by piece or how does it have to go to council, if at all? That's the only thing on our agenda tonight is the annexation agreement. Whether we send it tonight or we send it after a whole host of ? review, I don't think we're going to have any effect on this agreement. The ordinance that established a charter provision that calls for annexation, we have an ordinance that spells out the procedure, it says when the zoning and planning commission makes its recommendation to council, that recommendation shall include proposed terms and conditions when an annexation agreement, if any. As I said earlier, the annexation is something that doesn't bother you, the zoning is causing a little bit of problem because it's not a straight zoning and that zoning is called an LPD and what makes it not straight it requires a master plan. Something a little more detailed. They provided that. It sounds like the commission is saying they are provided an abundant detail. My advice to you is you recommend to council that you are uncomfortable with the terms of the annexation agreement, not even uncomfortable, but you defer to them the issues of cost in the agreement, because there is legitimate reason to do that. I think that the ordinance allows you to make your recommendation to annex and make your recommendation to accept the zoning, if that's what you want to do, but I guess if we do do it, ? it is very important to include on the record your minutes, because we have had a rather lengthy discussion where at least two commissioners have said they are uncomfortable, their confused, and those are things that if I was the applicant, I wouldn't be comfortable having a recommendation of that. All be it, it is just a recommendation. I don't know if I answered your question but everybody is focused on what the job to do is and it is to make a recommendation to council. If you need more information, you can request more information or you can make the recommendation. In the annexation agreement, it can be recommended ? stipulations, comments. I don't know if this is the appropriate time to bring this up as far as a stipulation goes, there was an issue with a previous development in town, which was clear cut? The trees were removed and it was brought up that it was planning and zoning's responsibility to ensure that that did not

happen again. Again, I don't know if this is the appropriate time to ask that question or have that stipulation in the agreement that the trees be saved that are not in the middle of the road or what have you, I'm not here to sound like a tree hugger, I'm here to sound like I want the town to be as beautiful as it possibly can. Here's one of the things that's truly different about this and our two previous LPD's. They came in annexed as R1's, that was it. We knew we wanted them in town, and we knew it could be this, that or the other. Then we had plenty of time to sit down with the master plan, that they had in Cannery Village, they must have had 90 stipulations on it by the time the master plan was finished. I don't know how many Carey ended up having by the time theirs was finished. That master plan was not part of the annexation process where we had plenty of time to sit down and review the master plan, get the stipulations and get everything clear. This was different. This is being annexed as two zoning districts and a master plan and I think all of our concerns are that we send this to council with a recommendation and this master plan goes with it, are we then bound to not be able to put any restrictions on that master plan should the town approve the LPD? There will be a lot ? like we want to make sure there is no clear cutting of property again. There could be a lot of stipulations we need to put on ? to get all those stipulations on ? I guess where this one is different, we want to move forward, we don't want to be stalled out, but we also want to proceed with caution and accuracy. What code difference between annexation agreement so that if we vote on things, if we feel that it should be annexed into the town, we recommended the annex into town, and we sent the agreement that has to be worked out between the town, developer and ? and we haven't gotten into anything else because once it goes then, they are going to have to submit their master plan, no, the master plan came with what they submitted, that's where our problem is, are we going to have the opportunity to go back over this master plan, make sure we have every stipulation, I'm thinking Cannery Village stipulation was where were the street lights that you use. It was all the things that made it look everything else in town. I don't remember if that was even part of the master plan that was submitted, it's been so long. If that was one of the things, it was like when they came in, it has to be the same street light system, it has to be this, this and that. We made sure the stipulations were on there but it wasn't part of the annexation, it came along later. Are we talking about the master plan? Yes. That's why I'm asking if it can be ?, I'm not talking about tonight, I want to bring it back out and look at it again, if that's how it has to go. I don't think we have any stipulations on that master plan at all. In doing that annexation agreement, it's asking for a conceptual site plan. They don't use a master plan. If you look at the town's LPD, that should be 4.8, we in zones may have to adopt the master plan. Not tonight, it can be sent with those two zoning districts to come back on the master plan? I think we need to review how the original application was actually worded.

May I speak for a moment, first of all, let me congratulate you on the work you are doing, but I wanted to ask the attorney something, this does not have to go forward to the council, they could annex it and the LPD can be asked for later and the master plan could be done at the next meeting, if that were agreeable between the developer and the zoning board, is that not correct? What is required when a property is annexed it be given a zone. State law says you can't bring a property in and not give it an identity. But the LPD is an overlay, that can be asked for separately and then that would allow you to go forward with the annexation and allow you to agree with the developer to come into the LPD immediately after the annexation takes place. My question was how was it advertised. An LPD is up to the city council to give and it can give that at any time. I believe the ordinance says it may be given at the same time. What makes the LPD ? has different opinions, what makes it unique, it's a zoning classification, like commercial,

residential, business, but what attaches to it is a subdivision plan. It's like a zoning classification that has a subdivision plan attached to it. To answer your question, no, if you apply for an LPD zone classification you need to have a master plan. Discussion on what an LPD is. One of the things that we talked about for North Milton, because ? is the same thing of trying to determine, they wanted commercial R1 and R3 and it became very difficult, what we talked about was to just make it all R1 and annex it, go to the next step where you come in for the preliminary master plan and is rezoned to exactly what you want. You're back to the two step process where do we want to annex the land? Yes, no. Is it basically residential or commercial then you move on and that is something that you can go back to being able to do within 90 days. Then as part of the LPD, you are essentially doing instead of an annexation agreement, you are basically doing a development agreement and moving forward. I'm not sure if that is something the applicant would be willing to discuss or not. That conceptual master plan is something for our protection and your protection. I think if you check the record back from the October hearing, we would voluntarily deed restrict to that number of units also and some other assurances like that. The reality is there is two ways to go. You can come in one way and redefine it later or the way we chose and the way it was suggested and the way that it is better for the town is to come in with a much higher degree of specificity under the LPD and then deed restrict and say this is what we agree not to do more of. If you said we'll give you 21 acres of R3 and whatever of R1, we come in and you don't have an LPD on it, we come back and say, great, now we want 15 units to an acre to R3 because we didn't do an LPD, we don't deed restrict the thing to that and that's when everybody is going to be upset. We can process where it is today, it's very difficult and it could be very upsetting to us if this process has to go back and then come in as R1 and all this other stuff, that would be very disappointing to me, I know. I think what you have here is and the reason we came in with the high degree of detail on the plans is to give you the comfort in knowing this is what this thing is going to look like, so that you can vote with a high degree of certainty. Yes I like it, no I don't like it, as opposed to what it could be this or it could be that, they may be nice looking, it may not be nice looking. I think where we are today is the confusion, I think that Mr. Willard has hit the nail on the head, the degree of confusion over the annexation agreement is just that. I totally agree with him that I don't think its even your ? if you wanted to change the annexation agreement, I don't know that you would have both the information necessary to do it and the mechanics to be able to do that, because council is still wrestling with that. I don't really think that's defined. The question of the annexation is, it's not just simply did we arbitrarily determine to do 21 acres of this? What we said was these are the different things, in order to be able to protect the surrounding property, we want to do this master plan and, even if it's not a master plan approval, let's say it wasn't advertised as that, on the record I remember saying we agree to do it this way so, at annexation, you have the certainty that we have agreed to do that and we also agreed to do a voluntary deed restriction as to the number of units that we would not exceed. I think with those things, if your ? is to send it to council or not send it to council, the way I read this is we were to discuss the annexation and discuss the review the annexation agreement and the recommendation letter to the town council. When I read that, I thought that meant you are going to review the annexation review and you were going to give your letter of recommendation, based upon the public hearing, as to the annexation, as to the zoning and as to the intricacies of those other items in addition to the annexation. That's what I understood. That's where I thought we were. Chapter 23 Section 23 for property vote the annex must be built independently of the annexation agreement pursuant to the zoning ordinance of the Town of Milton and the state law. There is a state law that requires you consider zoning and annexation separately. You have to do it sort of

together because they are applied together, but this commission has had public hearings on the zoning and they make the recommendation on the zoning separately and they make their recommendation on the annexation, I think they have, to answer your question about the master plan, this is about LPD, when a permanent master plan is approved by the Town of Milton, it shall be returned to the Milton planning and zoning committee pending preparation of a final master plan by the applicant. The final master plan incorporating all the requirements, amendments, additions, street lights and things like that will be reviewed by the Milton planning and zoning commission and shall be placed on a rapid act of approval. That is something that comes down the road. Whether a zoning requirement pre-application probably has not been dealt with in the state. I don't think it would be if the preliminary is approved at the LPD state. But pre-approving at the preliminary state ? that letter, right? Yes. If council gets it and approves it as a preliminary, we can't put stipulations on it then because the next thing it does is come back to be as a final. After the preliminary is approved by town council, it shall be returned to the planning and zoning committee pending preparation of the final map that was ? by the applicant. They would make changes to it, add all the bells and whistles, we put in 40 – 50 for Cannery Village that planning and zoning worked together to develop. Heritage, I think was even more. There's a statute ? for the LPD that after the plan comes back to you, and you have to review it, the applicant has to review it, the applicant has to submit it. We need to get this moving forward. If we approve it, then they can do what they want. If we send it to council for the recommendation of approval, it would be what they submitted, without any of our own stipulations, requirements or anything to add to it. We should have stipulations, requirements. We should make sure that ? it's been a while, I don't remember. We want to make sure that It's going to have a certain kind of streetlights, certain kind of houses, and make sure all these things are listed. We have to get moving forward in some way and that's going to be difficult as we see the LPD is coming with the annexation. That's why it's been difficult. We can't just vote on the annexation as a standalone with the town. The agreement really needs to get to council for them to review and set policies and establish, but, apparently the agreement can't go to them without the entire package. We're bound to do the annexation, zoning, master plan the annexation agreement all at one time and give them a recommendation. Discussion on whether another meeting is needed to gather more needed information. Would it help to have a workshop, we can't make motions at workshops. If we have a meeting just for you, with a workshop atmosphere, we can get it worked out. A decision was made to hold another meeting on Tuesday, April 11 at 7 p.m. We have a motion to adjourn. We are adjourned.